

**IN THE UNITED STATES DISTRICT COURT  
FOR THE NORTHERN DISTRICT OF WEST VIRGINIA**

**STEVEN HOWARD,**

**Plaintiff,**

**v.**

**Civil Action No. 2:06cv74  
(Judge Maxwell)**

**ELKINS CITY POLICE, RANDOLPH  
COUNTY SHERIFF and STATE  
POLICE OF ELKINS,**

**Defendants.**

**OPINION/REPORT AND RECOMMENDATION**

On July 21, 2006, the *pro se* plaintiff initiated this case by filing a civil rights complaint against the above-named defendants. Plaintiff, an inmate at the Mt. Olive Correctional Center, is proceeding *pro se* and *in forma pauperis*. On August 14, 2006, the defendant, Elkins City Police, filed a Motion to Dismiss for lack of jurisdiction and a Motion for More Definite Statement. On August 17, 2006, the undersigned conducted a preliminary review of the case and issued an opinion recommending that the complaint be dismissed without prejudice pursuant to 28 U.S.C. §§ 1915A and 1915(e) for the failure to state a claim. See dckt. 12. In light of this finding, the undersigned also recommended that the Motion to Dismiss and for a More Definite Statement filed by the Elkins City Police be denied without prejudice as moot. On August 29, 2006, the State Police of Elkins filed an Answer and Motion to Dismiss case as frivolous.

For the reasons set forth in the Opinion/Report and Recommendation filed on August 17, 2006, the undersigned recommends that the State Police of Elkins Motion to Dismiss this case as frivolous (dckt. 15) be GRANTED.

Within ten (10) days after being served with a copy of this recommendation, any party may file with the Clerk of Court written objections identifying those portions of the recommendation to which objection is made and the basis for such objections. A copy of any objections should also be submitted to the Honorable Robert E. Maxwell, United States District Judge. Failure to timely file objections to this recommendation will result in waiver of the right to appeal from a judgment of this Court based upon such recommendation. 28 U.S.C. § 636(b)(1); Thomas v. Arn, 474 U.S. 140 (1985); Wright v. Collins, 766 F.2d 841 (4<sup>th</sup> Cir. 1985); United States v. Schronce, 727 F.2d 91 (4<sup>th</sup> Cir.), cert. denied, 467 U.S. 1208 (1984).

The Clerk is directed to mail a copy of this Opinion/Report and Recommendation to the *pro se* plaintiff and counsel of record, as applicable.

DATED: October 16, 2006.

/s/ John S. Kaull  
JOHN S. KAULL  
UNITED STATES DISTRICT JUDGE